

**CV 15**

**5001**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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OSWALD BASTIEN

Plaintiff,

against

The City of New York, DOES 1-10

Defendant(s)  
-----X

U.S. DISTRICT COURT  
EASTERN DISTRICT  
OF NEW YORK  
INDEX NO.

**COMPLAINT**

**PLAINTIFF DEMANDS  
TRIAL BY JURY**

**DEARIE, J.**  
**POHORELSKY, M.J.**

TAKE NOTICE, the Plaintiff, Oswald Bastien, hereby appears in this action by his attorneys, Umoh Law Firm, PLLC and demands that all papers be served upon him, at the address below, in this matter.

Plaintiff, Oswald Bastien by his attorney, Uwem Umoh Esq., complaining of the defendants, The City of New York, The New York City, and "John Does" collectively referred to as the Defendants, upon information and belief alleges as follows:

### **NATURE OF THE ACTION**

1. This is an action at law to redress the deprivation of rights secured to the plaintiff under color of statute, ordinance, regulation, custom, and or to redress the deprivation of rights, privileges, and immunities secured to the plaintiff by the Fourth, Fifth, Eighth and Fourteenth Amendments to the Constitution of the United States, and by Title 42 U.S.C. § 1983 [and § 1985], [and arising under the law and statutes of the State of New York].
2. This is an action to further seek compensation for the serious and permanent personal injuries sustained by the plaintiff, as a result of the negligence of the defendants, perpetrated while said defendant officers were in the process of illegally and unlawfully arresting plaintiff.

### **JURISDICTION**

3. This action is brought in Eastern District of New York as the venue where the relevant facts of this action occurred.

### **PARTIES**

6. Plaintiff Oswald Bastien resides in Brooklyn New York and is a resident of the State of

New York.

7. Defendants "John Doe" and "Jane Doe" 1'through'10 are unknown police officers for the City of New York, acting under color of state law. They are being sued in both their individual and official capacity.
8. The Defendant, City of New York is a municipality in the State of New York and employs the Defendants Police Officers.

### **FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

9. On or about March 2015 at approximately 1:30am, New York Police Officers unlawfully arrested claimant at Avenue J and 86<sup>th</sup> Street, Brooklyn NY.
10. The officers claimed plaintiff had a suspended license, after initially stopping him and giving him a sobriety test. After he passed the sobriety test they created a false pretext to arrest claimant.
11. Plaintiff was held for approximately 24 hours before being released with no charges. However, as a result of plaintiff's arrest he has been stopped by immigration for being arrested despite the fact that he did not commit a crime.
12. Mr. Bastien has never been arrested before and this incident has hampered his ability and business that involves travelling freely internationally.
13. As a direct and proximate result of defendants' actions, plaintiff suffered and continues to suffer injuries, including but not limited to emotional distress, nightmares, panic attacks, mental anguish and unwarranted severe anger bouts some or all of which may be permanent.
14. As a direct and proximate result of defendants' actions, plaintiffs suffered and continue to suffer, mental anguish, repetitive injury, psychological and emotional distress, and physical pain and suffering, some or all of which may be permanent.
15. As a direct and proximate result of their unlawful search seizure and assault, Plaintiff has lived in terror of their attack, and continues to suffer from nightmares, are fearful of going outside and when he sees the police, and suffer various emotional attacks, in addition, and have been unable to function normally which has caused a severe strain and breakdown in his personal relationships, in and outside of their homes.
16. As a direct and proximate result of defendants' actions, plaintiffs were deprived of rights, privileges and immunities under the Fourth, Fifth, Eighth and Fourteenth Amendments to the United States Constitution and the laws of the City of New York and the State of New York.

17. Defendant City of New York, as a matter of policy and practice, has with deliberate indifference failed to properly sanction or discipline officers including the defendants in this case, for violations of the constitutional rights of citizens, thereby causing officers including defendants in this case, to engage in unlawful conduct.
18. Defendant City of New York, as a matter of policy and practice, has with deliberate indifference failed to sanction or discipline police officers including the defendants in this case, who are aware of and subsequently conceal violations of the constitutional rights of citizens by other police officers thereby causing and encouraging officers including defendants in this case, to engage in unlawful conduct.
19. The actions of defendants, acting under color of State law, deprived plaintiff of his rights, privileges and immunities under the laws and Constitution of the United States; in particular, the rights to be secure in his person and property, to be free from the excessive use of force and from malicious prosecution, abuse of process, and the right to due process.
20. By these actions, defendants have deprived plaintiff of rights secured by the Fourth, Eighth, and Fourteenth Amendments to the United States Constitution, in violation of 42 U.S.C. Section 1983.
21. A written claim was filed upon the City of New York, and at least thirty-days have elapsed since the service of the Notice of Claim and the adjustment or the payment of the claim has been neglected or refused.
22. This action has been commenced within one year and ninety days after the happening of the event upon which the claim is based.

**AS A FIRST CAUSE OF ACTION:**

**42 U.S.C Section 1983-against All Defendants**

23. Plaintiff hereby restates all paragraphs above of this complaint, as though fully set forth below
24. By unlawfully arresting Plaintiff without justification, probable cause or reasonable suspicion, using excessive force, and assaulting him, the Officers, Defendants deprived Plaintiff of rights, remedies, privileges, and immunities guaranteed to every citizen of the United States, in violation of 42 U.S.C. Section 1983, including, but not limited to, rights guaranteed by the Fourth, Fifth, Eighth and Fourteenth Amendments of the United States Constitution.
25. In addition, the Defendants officers conspired among themselves to deprive plaintiff of his constitutional rights secured by 42 U.S.C. Section 1983, and by the Fourth, Fifth, Eighth and Fourteenth Amendments to United States Constitution, and took numerous

overt steps in furtherance of such conspiracy, as set forth above.

26. The Defendant Officers acted under pretense and color of state law and in their individual and official capacities and within the scope of their respective employment as NYPD Officers. Said acts by the Defendants Officers were beyond the scope of their jurisdiction, without authority of law, and in abuse of their powers, and said Defendants acted willfully, knowingly, and with the specific intent to deprive the Plaintiff of his constitutional rights secured by 42 U.S.C. Section 1983, and by the Fourth, Eighth and Fourteenth Amendments to the United States Constitution.
27. As a direct and proximate result of the misconduct and abuse of authority detailed above, Plaintiff sustained the damages herein before stated.

### **AS A SECOND CAUSE OF ACTION:**

New York State Constitution, Art. 1 Section 12

28. Plaintiff hereby restates all paragraphs of this complaint, as though fully set forth below
29. By unlawfully searching and assaulting plaintiff, without probable cause or reasonable suspicion, using excessive force, and assaulting them, the Defendant Officer deprived Plaintiff of rights, remedies, privileges, and immunities guaranteed to every New Yorker by Article 1, Section 12 of the New York Constitution.
30. In addition, the Defendant Officers conspired among themselves to deprive plaintiff of his constitutional rights secured by Article 1, Section 12 of the New York Constitution, and took numerous overt steps in furtherance of such conspiracy, as set forth above.
31. The Defendants Officers acted under pretense and color of state law and in their individual and official capacities and within the scope of their respective employment as NYPD and Corrections Officers. Said acts by the Defendants Officers were beyond the scope of their jurisdiction, without authority of law, and in abuse of their powers, and said Defendants acted willfully, knowingly, and with the specific intent to deprive the Plaintiffs of his constitutional rights secured by Article 1, Section 12 of the New York Constitution.
32. Defendants, their officers, attorneys, agents, servants and employees were responsible for Plaintiff's deprivation of his state constitutional rights. Defendant City, as employer of each of the Officer Defendants, is responsible for their wrongdoing under the doctrine of respondeat superior.
33. As a direct and proximate result of the misconduct and abuse of authority detailed above, plaintiffs sustained the damages herein-before alleged.

**WHEREFORE**, plaintiff respectfully requests judgment against the Defendants as follows:


1. On the First Cause of Action against all the defendants, compensatory and punitive damages in an amount to be determined at trial, and reasonable attorneys' fees and costs under 42 U.S.C. Section 1988;
2. On the Second Cause of Action, against all Defendants, compensatory damages in an amount to be determined at trial, and punitive damages against the Officers Defendants in an amount to be determined at trial;
3. Such other and further relief as this Court may deem necessary in the interest of justice.

Dated:  
August 26, 2015

Brooklyn, New York

Respectfully Submitted

By:

  
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